

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YEHUDA HERSKOVIC,

Plaintiff,

-against-

VERIZON WIRELESS,

Defendant.

Case No.: 1:2019cv03372

**DEFENDANT CELLCO
PARTNERSHIP D/B/A VERIZON
WIRELESS'S OPPOSITION TO
PLAINTIFF'S REQUEST FOR
RECONSIDERATION AND FOR
RULE 11 SANCTIONS**

Case Removed: June 6, 2019
Compelled to Arb.: March 6, 2020

On December 2, 2020, Plaintiff Yehuda Herskovic (“Plaintiff”) filed a second (unsolicited) status update regarding arbitration (Doc. No. 33). In the update, Plaintiff requests for the second time that the Court reconsider its March 6, 2020 order compelling arbitration (Doc. No. 29) and also issue Rule 11 sanctions. There is no legal or factual basis for the Court to reconsider its prior order or to sanction Defendant Cellco Partnership d/b/a Verizon Wireless, erroneously sued as “Verizon Wireless” (“Verizon”).

On January 23, 2020, after a full briefing, multiple supplemental filings, and a hearing, Magistrate Judge Robert M. Levy issued a seven-page Report and Recommendation (Doc. No. 25) that the matter be compelled to arbitration based on the parties written agreement to arbitrate. Plaintiff opposed the Report and Recommendation, and after another round of briefing, the Court adopted the Report and Recommendation on March 6, 2020 (Doc. No. 13).

Nine months later, Plaintiff has not yet filed a demand for arbitration pursuant to the Court’s order, and now purports to bring a second untimely motion for reconsideration and sanctions under the guise of a status update. *See* E.D.N.Y. Local Rule 6.3. In his purported motion, Plaintiff has reiterated the same arguments rejected by the Court and Magistrate in compelling this case to arbitration. There is no basis whatsoever for Plaintiff’s claim that he has no arbitration agreement with Verizon. Verizon’s counsel has informed Plaintiff that he may initiate a *pro se* arbitration by calling the American Arbitration Association (“AAA”). As of the date of this submission, Plaintiff has not yet initiated arbitration, and it is unknown if he intends

to do so. Consistently, there is no basis or justification whatsoever for Plaintiff's pursuit of or claim for an entitlement to sanctions, and most respectfully, we ask that such pursuit be outrightly denied, and that Plaintiff be directed to refrain from such baseless accusations.

Here, Defendant respectfully requests that the Court decline to entertain Plaintiff's request for reconsideration or for sanctions. And, in the event the Court decides to entertain the motion, Defendant respectfully requests that a briefing schedule be set in order to provide Defendant a full and fair opportunity to address Plaintiff's contentions, and to be heard on the issues.

Dated: New York, New York
December 18, 2020

Respectfully submitted,



Howard A. Fried (HF2114)
McGIVNEY, KLUGER, CLARK & INTOCCIA, P.C.
Attorneys for Defendant
**Cellco Partnership d/b/a Verizon Wireless, *incorrectly*
sued as “Verizon Wireless”**
80 Broad Street, 23rd Floor
New York, NY 10004
hfried@mkcilaw.us.com

TO:

Yehuda Herskovic
Plaintiff Pro Se
303 Marcy Ave.
Brooklyn, NY 11211